

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 368 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VINODCHANDRA TRIKAMLAL PARIKH

Versus

STATE OF GUJARAT

Appearance:

NANAVATI ASSOCIATES for Petitioner
MR MA BUKHARI ASSTT. GOVERNMENT PLEADER
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 17/07/97

ORAL JUDGEMENT

Heard Mr.Chudgar for the petitioner and Mr.Bukhari,AGP for the respondents. This petition has already been admitted on 17th January, 1997. Both the parties have made their submissions. After the petitioner filled in necessary forms under the provisions of Urban Land (Ceiling and Regulations) Act, 1976, the same came to be finalised by the order of the competent

authority passed on 30th March, 1994. In that order, small portion of the land being 48.5 sq.mts. from what is described as property No.4, came to be declared as surplus. Being aggrieved by that order, the petitioner preferred an appeal. The appellate authority came to the conclusion that for the finding of the competent authority with respect to property No.7 situated at Asarwa and property No. 9 situated at Jamalpur, no satisfactory documentary evidence was produced to come to the conclusion that there existed any construction on those plots prior to the Act came into force. The appellate authority, therefore, reopened the matter and remanded the same to the competent authority by its order dt. 24th April, 1995. It is against this order that the present petition is filed.

2. Mr.Chudgar, learned advocate appearing for the petitioner has taken me through records and has pointed out that documentary material was placed before the competent authority to justify the inference which it had drawn. He has also pointed out that those documents were also produced before the appellate authority. It is true that there is no discussion in the order of the appellate authority with respect to those two properties or the documentary material that had been produced. However in view of the fact that such documentary evidence had actually been produced before that authority, the petitioner should not have been made to suffer only for absence of specific discussion on those documents. Mr. Chudgar submits that the appellate authority could have, in any case, looked into those documents and corrected the error assuming that there is any, instead of remanding the matter. Having seen the record, I am satisfied that there is documentary evidence to show that there did exist constructions on those two properties prior to 1976. In that view of the matter, finding of the competent authority on those two properties is correct. There is no need to reopen and remand the matter and hence the order of the appellate authority dt. 24th March, 1995 is required to be interfered with. The same is hereby quashed and set aside.

3. Mr. Chudgar states that as far as 48.5 sq.mts. of lands in property No.4 are concerned, the petitioner is not pressing any further objection with respect to that and he would be satisfied, if the order of the competent authority is confirmed. The same is accordingly confirmed. The petition is therefore allowed. Rule is made absolute accordingly, with no order as to costs. Status quo granted earlier stands vacated.
